

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-210258

DATE: April 15, 1983

MATTER OF: A-1 Jersey Mayflower

DIGEST:

Agency correctly rejected bid as nonresponsive where bidder failed to acknowledge receipt of an amendment incorporating wage rate determination and where record fails to show that bidder is legally obligated to pay wages not less than those provided for in the minimum wage rate determination. The fact that the bidder may not have received the amendment is irrelevant unless the failure to receive the bid resulted from a deliberate attempt by the contracting agency to exclude the firm from the competition.

A-1 Jersey Mayflower (A-1) protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. DABT35-82-B-0148, issued by the Army for the packing, crating, storage and movement of household goods. The Army rejected the bid because A-1 failed to acknowledge an amendment incorporating a wage rate determination. A-1 argues that it should be given an opportunity to cure the defect since the amendment would have no effect on its bid price. Further, A-1 contends it did not receive the amendment.

We deny the protest.


A bidder's failure to acknowledge a material amendment to an IFB generally renders the bid non-responsive. Porter Contracting Company, 55 Comp. Gen. 615 (1976), 76-1 CPD 2. While we have recently held that a bidder's failure to acknowledge an amendment incorporating a wage rate determination may be cured where the bidder is required by union contract to pay wages in excess of the rates included in the wage rate determination and where there would be no prejudicial effect on competition, there is nothing in the record which indicates that A-1 is legally required to pay wages not less than those provided for

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in the minimum wage rate determination. Brutoco Engineering & Construction, Inc., 62 Comp. Gen. (B-209098, January 4, 1983), 83-1 CPD 9. Under these circumstances, the Army acted properly in rejecting A-1's bid as nonresponsive.

Furthermore, we note that it is the bidder that bears the risk of nonreceipt of a solicitation amendment. The contracting agency discharges its legal responsibility when it issues and dispatches an amendment in sufficient time to permit all bidders to consider the amendment in formulating their bids. Rockford Acromatic Products Company, B-208437, August 17, 1982, 82-2 CPD 143. Consequently, the fact that A-1 may not have received the amendment is not relevant unless the failure results from a conscious or deliberate effort by contracting officials to exclude A-1 from competition. 3B Building Maintenance Co., B-205257, October 28, 1981, 81-2 CPD 364. Since A-1 does not suggest that it did not receive the amendment because of a deliberate attempt to exclude it from consideration for award, this protest ground is without merit.

The protest is denied.

for 
Comptroller General
of the United States